

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL MEETING
TUESDAY, JULY 28, 2009

5:30 P.M. SPECIAL COUNCIL MEETING (Study Session)

Study Session Presentation: Parliamentary Procedure and Options for Ending More Council Meetings by 10 p.m.

7 P.M. COUNCIL MEETING

CALL TO ORDER

SALUTE TO THE FLAG

Mayor Spitaleri led salute to the flag.

ROLL CALL

PRESENT: Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT: None

STAFF PRESENT: City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Public Safety Don Johnson
Director of Public Works Marvin Rose
Finance Manager Grace Leung
Director of Human Resources Erwin Young
Director of Information Technology Cuong Nguyen
Revenue Systems Supervisor Tim Kirby
Senior Planner Diana O'Dell
Redevelopment Manager Brice McQueen
City Clerk Kathleen Franco Simmons

PUBLIC ANNOUNCEMENTS

Mayor Spitaleri announced Commander of the United States Navy Reserve / Councilmember Otto Lee presented the City of Sunnyvale with a United States flag that had been flown in the City's honor over the headquarters of the Multi-National Corps-Iraq during Operation Iraq Freedom.

Dan Hafeman announced that Tuesday, August 4 is *National Night Out*, a night set aside for events against crime. Hafeman explained the Sunnyvale neighborhood associations hold various events such as the ice cream social being held by the Sunnyvale West Association.

Jeanine Stanek, member of the Sunnyvale Historical Society, announced the museum is open for the summer. Stanek announced Mayor Spitaleri will hold this year's State of the City event at the Sunnyvale Heritage Museum.

Stanek announced the Sunnyvale Art Club has art pieces on display at the museum in September.

Pat Meyering, member of the Santa Clara County Fairgrounds Management Board, announced the upcoming County Fair.

Jack Lucas, President of Board of Trustees for West Valley Mission College District, introduced the new district board members and the Chancellor of West Valley Mission College. All members offered comments.

CONSENT CALENDAR

Councilmember Whittum and Councilmember Howe removed Item 1.E from the Consent Calendar.

An unidentified member of the public requested to pull Item 1.F from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve the Consent Calendar with the exception of Items 1.E and 1.F.

Councilmember Whittum explained he pulled Item 1.E. in order to vote against this item.

VOTE: 7-0

1.A. Approval of Council Meeting Minutes of June 23, 2009

1.B. Approval of Council Meeting Minutes of July 14, 2009

1.C. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.D. RTC 09-192 List of Claims and Bills Approved for Payment by the City Manager – List No. 461 and 462

Staff Recommendation: Review the attached lists of bills.

Personnel

1.E. RTC 09-203 Modification of Memoranda of Understanding: Sunnyvale Employees Association and Public Safety Officers Association

Councilmember Whittum stated he pulled this item in order to vote against it.

Councilmember Howe verified with Director of Human Resources Erwin Young that the represented and unrepresented employees have agreed to forgo any raises for the coming year. Director Young explained that this item requires Council action on two bargaining units, Sunnyvale Employees Association (SEA) and the Sunnyvale Public Safety Officers Association (PSOA). Although, the City has also reached agreements with the Service Employees International Union (SEIU) and the Sunnyvale Communication Officers Association, Council will take official action on these additional groups in August 2009. Director Young explained that all other employees will follow this direction and will not be receiving raises this year. Councilmember Howe verified with Director Young that at this time, Council is the exception to forgoing a raise this year.

Councilmember Howe verified with Director Young that the Sunnyvale Manager's Association went without an increase last year.

Councilmember Howe verified with Director Young that savings from the two groups mentioned this evening will save the City two million dollars over the next year.

City Manager Gary Luebbbers explained that the department directors, including the city manager and city attorney, have also stepped forward and agreed to forgo any raises this year.

Councilmember Howe verified with Director Young that most of the employees who agreed to forgo raises this year were actually due to receive raises.

Councilmember Swegles thanked staff for recognizing the City's current economic situation and for assisting the City by coming forward with an offer to forgo any raises for the upcoming year.

Mayor Spitaleri opened public comments.

No speakers.

Mayor Spitaleri closed public comments.

Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Adopt the modification/supplement to the Memoranda of Understanding with the Sunnyvale Employees Association and the Public Safety Officers Association.

Councilmember Howe requested the city manager express Council's gratitude to all City employees for coming forward and agreeing to forgo raises this year.

Councilmember Whittum stated he will oppose the motion because although he agrees with expressing gratitude to staff, he is opposed to extending the Public Safety Officers Association contract out two years.

City Manager Luebbers explained the importance of staff's action as the City is facing a four million dollar decrease in property tax revenue from the state in the coming year.

VOTE: 6-1 (Councilmember Whittum dissented)

Contracts: Sunnyvale Works!

1.F. RTC 09-198 Award of SunnyvaleWorks! Bid No. F0805-76 for the Refurbishment of Water Tanks at Wright Avenue

Public comments opened.

Marcus Turner, counsel for Blastco Incorporated, explained that Blastco was the second low bidder for this project. Turner spoke against the staff recommendation awarding the bid to AA-1 Service Incorporated, due to irregularities in AA-1's bid which offered them an unfair advantage over Blastco. Turner stated AA-1 was not required to comply with the same specifications required for bidding as Blastco. Turner stated Blastco has spent nearly a million dollars over the last decade in order to comply with the specification requirements for bidding this project. Turner stated there are many discrepancies in AA-1's bid and issues with their certification. Turner stated his client, Blastco, is prepared to move forward with a writ of mandate or injunction should the award for this project be granted to AA-1.

Ryan Moore, counsel for Blastco, spoke about the audit checklist which offers an analysis of the requirements for a contractor to be able to bid on this type of project. Moore stated the City is giving AA-1 an unfair advantage.

Gregory Weber, Operations Manager for Blastco, explained Blastco did meet the requirements of the City's proposal and should be awarded the contract.

Terry Warren spoke of the unfair advantage given to AA-1 and stated if Blastco had not been required to meet the requirements, then they would have bid their contract quite differently. Warren noted differences in the bids submitted from certified contractors and non-certified contractors.

Public comments closed.

Councilmember Howe verified with Director of Public Works Marvin Rose that staff received a protest letter from Blastco, which was forwarded to the low bidder in order to allow them a chance to respond. Staff then took both letters and turned them over to the City's consultant, who wrote the specifications. Director Rose explained the consultant's response was that AA-1 did meet the requirements of the specifications. The consultant clarified that the specifications do not require certification. Staff may consider contractors who meet all the requirements but are not certified. Director Rose explained that based on the response from the consultant, staff proceeded and rejected the bid protest.

Vice Mayor Moylan verified that City Attorney David Kahn concurs with the staff recommendation to award the bid to AA-1. City Attorney Kahn stated the City relies on the consultant, who put the bid specifications together, to review all of the bid submissions, contractor qualifications, and any bid protests received. City Attorney Kahn explained the consultant has concluded that the low bidder is responsive to the qualifications.

Councilmember Chu verified with Director Rose that if this item were to be re-bid, it could take an additional two to four months, depending on the intent of the Council.

Mayor Spitaleri verified with Director Rose that AA-1 is not certified; however, they meet the bid requirements as verified by the consultant. Director Rose explained that Blastco's argument is that the specifications require certification; however, certification is not a requirement of the specifications.

Mayor Spitaleri inquired if those performing the work need to be certified and Director Rose responded that AA-1 meets all requirements of the work and of the specifications. The City has no basis for not moving forward with the recommendation to award the contract.

Councilmember Whittum stated since Council has been given a legal brief from Blastco, and suggested this item be continued to a closed session prior to the next meeting.

City Attorney Kahn explained that Council may move forward with a decision on awarding the bid this evening. The issues raised in the legal brief are the same as what was contained in the bid protest. City Attorney Kahn stated Council may hold a closed session; however, it is not necessary.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternatives 1 and 2.

- Alternative 1: Award a contract, in substantially the same format as the attached draft and in the amount of \$1,233,153 to AA-1 Services, Inc., for Refurbishment of Water Tanks at Wright Avenue and authorize the city manager to execute the contract when all necessary conditions have been met, and
- Alternative 2: Approve a project contingency in the amount of \$123,315.

Councilmember Hamilton stated staff has done a good job on this item and she does not see the benefit in re-bidding this project or holding a closed session. Councilmember Hamilton stated Council does not have control over what Blastco chooses to do legally.

Councilmember Chu stated he opposes the motion because the distinction between being certified and meeting the requirements is ambiguous enough to allow a re-bid. All bidders should be made aware that it is not a requirement to be certified.

Mayor Spitaleri stated he is concerned over the legal brief from Blastco, which was just received, and he would like time to review it further prior to voting on this item. Mayor Spitaleri stated his concern over the contractor meeting the certification requirements and actually having the certification. Mayor Spitaleri stated he will oppose the motion as he is in favor of re-bidding this item and reviewing the legal brief.

VOTE: 4-3 (Councilmember Whittum, Mayor Spitaleri, and Councilmember Chu dissented)

1.G. RTC 09-200 Award of SunnyvaleWorks! Bid No. F0806-86 for the Public Safety Building HVAC Equipment Replacement and Roofing Improvements

Staff Recommendation: 1. Award a contract in the amount of \$1,588,460, to Best Contracting Services, Inc., for Public Safety Building HVAC Replacement and Roofing Improvements and authorize the city manager to execute the contract when all necessary conditions have been met; and 2. Approve a project contingency in the amount of \$238,269.

1.H. RTC 09-201 Award of Sunnyvale Works! Contract for Design Services During Construction for the Wolfe Road Overhead Bridge Rehabilitation Project

Staff Recommendation: 1. Award a contract in the amount of \$139,514 to HNTB Corporation and authorize the city manager to execute the contract when all necessary conditions have been met, 2. Approve a project contingency in the amount of \$13,952.

Other Items

- 1.I. **ORDINANCE Adoption of Ordinance No. 2900-09 Awarding Nonexclusive
2900-09 Franchise to Jeffrey Browning and Amandeep Kaur, Owners of
 ACME Yellow LLC, Doing Business as ACME Cab**

Staff Recommendation: Approve the second reading of Ordinance No. 2900-09.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

Tap Merrick explained he is following up on concerns outlined in his June 12, 2009 email to Council regarding Hexagon Traffic Consultants. Merrick provided copies to Council of comments made between Councilmember Howe and Traffic and Transportation Manager Jack Witthaus identifying that the bid was to be a non-partial bid. Merrick expressed his concerns over Hexagon and stated staff needs to do a through review of the bidder and hold them responsible for what they promise to do. Merrick suggested Hexagon be eliminated from the bid process for an extended period of time due to their poorly done traffic studies.

PUBLIC HEARINGS/GENERAL BUSINESS

2. **RTC 09–191 2008-0861 - Creation of Eichler Design Guidelines Continued from
 June 23, 2009 (Study Issue)**

Director of Community Development Hanson Hom presented the staff report.

Vice Mayor Moylan verified with Director Hom that the history of creating guidelines was prompted by Council direction from several years ago. Senior Planner Diana O'Dell explained that in 2005 staff began to look for potential historical resources in the City. Vice Mayor Moylan inquired as to who sponsored this study issue and Senior Planner O'Dell responded that Council initiated the study issue. At the time, many residents expressed concerns that there were not enough requirements to preserve the Eichler character and staff recommended developing Eichler guidelines, but they were not to be as strict as the heritage resource standards. The guidelines were meant to offer better guidance than the single family design techniques. Senior Planner O'Dell stated at the time Council agreed with staff's recommendation.

Vice Mayor Moylan verified with Director Hom that in addition to the new Eichler guidelines, staff is recommending a change to the single family design techniques for those homes adjacent to an Eichler home. Vice Mayor Moylan verified with Senior Planner O'Dell that the single family design guidelines will be amended to reflect the change to homes adjacent to an Eichler home.

Vice Mayor Moylan verified with Director Hom that there are a number of guidelines and each case will be reviewed individually. There is not a requirement that a certain number of guidelines be met. Director Hom explained that staff views these guidelines as a living document and guidelines will be adjusted if they are deemed to be too restrictive, lenient, or need to be amended.

Councilmember Whittum verified with Director Hom that Council has the option to decide whether to allow Eichler neighborhoods the opportunity to vote on adopting the guidelines for their neighborhood.

Councilmember Whittum verified with Director Hom that if an Eichler needed to be rebuilt, the issues with the building code would involve items such as shear wall strength and the amount of window area. Director Hom stated an identical Eichler could not be rebuilt; however, a similar style could be recreated that would meet the current building code.

Public hearing opened at 8:12 p.m.

Scott MacIntosh, Eichler homeowner, stated he is in favor of property rights. MacIntosh stated maintenance, fencing, landscaping, and cosmetic issues should not be part of the guidelines. MacIntosh stated there are many contradictions within the guidelines and urged Council to reject the guidelines until they meet the homeowner's needs.

Bret Flesner expressed concerns over the proposed guidelines and questioned what problem the guidelines are attempting to address. Flesner stated in his neighborhood, approximately 80 percent of the homes have been modified to such an extent they do not resemble an Eichler from the front any longer. Flesner stated in order to preserve the Eichler neighborhoods; they would need to be restored back to looking like an Eichler first. Flesner stated the guidelines will not address any problems and they will actually create more problems in the long run.

Gaylen Davis stated the proposed guidelines will limit homeowner's property rights. Davis stated an overwhelming majority among the homeowners in favor of these guidelines does not exist. Davis stated he is not aware of any problems in which guidelines are needed.

Margaret Klughe stated she approves of the single family combining district; however, she does not support the proposed guidelines nor does she feel they are necessary.

Michael Goldman, Eichler homeowner, expressed concerns with the Eichler guidelines. Goldman stated in general he is in favor of preserving the flavor of the Eichler; however, the guidelines go too far.

James Becker stated he is not in favor of the guidelines for many of the reasons already stated. Becker offered support for Councilmember Whittum's suggestion to have each neighborhood vote on the proposed guidelines.

Arthur Schwartz stated he is in favor of the proposed guidelines. Schwartz stated he bought his Eichler home many years ago because of the design of the home and the neighborhood. Schwartz stated efforts should be made to maintain the look of the neighborhood, identifying that some Eichlers have flat roofs and some have pitched roofs. Schwartz stated he would like to have the single story of an Eichler maintained and in this regard, the proposed guidelines need to be more specific.

Bob Ormiston stated he approves of the guidelines; however, they are not ready to be adopted. Ormiston stated the guidelines do not address second stories to the degree they should; the guidelines are not very clear or consistent, and direction on how the guidelines will be applied is missing.

Lou Wirtz, Eichler homeowner, stated he is not in favor of all the guidelines and expressed concern over the clarity and non-specifics of some of the guidelines.

Glen Hendricks, Eichler homeowner, stated the proposed guidelines are not ready to be finalized at this time because the history of the Eichler home needs to be addressed within the guidelines. Hendricks identified that any consultant working on the guidelines should be familiar with the Eichler home and its history in order to write pertinent guidelines.

Jeanine Stanek, Eichler homeowner, recognized that a lot of work has gone into developing the guidelines and she is in favor of preserving the Eichler design within the City. Stanek acknowledged the guidelines may need more work. Stanek expressed concern over allowing individual neighborhoods to vote on the guidelines, because as neighbors come and go, neighborhoods would need to vote every few years, which would be a cumbersome process.

Wilma Anderson stated an Eichler is recognized by the way it looks and it is important to preserve the appearance of the Eichler. Anderson stated the guidelines do not address second story additions, which is a concern. Anderson stated she is in favor of designating Eichler homes in Sunnyvale as historical resources.

Kathleen Kronenwetter, Eichler homeowner, stated she would like her neighborhood preserved and she supports the proposed guidelines.

Public hearing closed at 8:47 p.m.

Vice Mayor Moylan agreed with comments over this being a property rights issue. Vice Mayor Moylan verified with Director Hom that if the guidelines are not adopted, the neighborhoods will continue to be subject to staff's discretion and more homes would exist which do not resemble an Eichler. However, if the proposed guidelines were approved they would provide specifics on what an Eichler home should look like. Director Hom explained that design techniques would be generic guidelines that would govern all additions and modifications and provide additional guidance to staff on encouraging designs that are more compatible with the style of an Eichler. Vice Mayor Moylan verified

with Director Hom that a homeowner would apply for a permit and if it they were denied they could appeal it to the Planning Commission and then the Council. Vice Mayor Moylan acknowledged that a broad guideline, as is currently in place, is more supportive of homeowner property rights because it allows the property owner to have three chances to have their project approved. Vice Mayor Moylan explained that the reason single family design guidelines were introduced was because many homeowners were unhappy with the additions and modifications that were occurring to the homes as property values were being affected. Vice Mayor Moylan verified with Director Hom that adoption of the proposed Eichler guidelines would create a targeted model of what staff is likely to approve.

Councilmember Swegles spoke about the three different styles of Eichler homes and proposed guidelines for the three styles. Councilmember Swegles inquired if this could be adopted into the proposed guidelines and suggested that pictures be included to further define the styles. Director Hom responded staff could identify the original records of the building permit plans for further reference for homeowners. Director Hom stated there are not really three distinct styles of the Eichler homes, rather there are distinct features that differ slightly, such as roof lines and windows.

Councilmember Hamilton questioned how staff would address homes that are already non-conforming to the Eichler style at times when they need to have maintenance done or request alterations. Director Hom responded that consideration would be given, and some options would be allowed, in recognition that there are certain cost issues attached to conforming to the Eichler style.

Councilmember Hamilton clarified with Director Hom that the proposed guidelines are not the same as zoning standards, which are more restrictive. Director Hom responded that the guidelines would be applied on a case by case basis and balanced with the needs of the homeowner. The guidelines for example do not prohibit second story additions and the homes are not energy efficient, so it is likely homeowners may want to make these types of alterations to their homes, and at that point it would be difficult to say how strictly they will be applied. Director Hom explained that as staff applies these guidelines and appeals are brought forward to the Planning Commission, these actions may help define a track record of how the guidelines will be applied going forward.

Councilmember Hamilton explained that second story additions are allowed as a right under RO zoning and questioned whether prohibiting second story additions for an Eichler home would bring up any legal issues. Director Hom responded that if a particular neighborhood has a strong aversion toward allowing second story additions to their Eichler homes, then the option exists to adopt a single story overlay within that neighborhood.

Councilmember Hamilton verified with Director Hom that if someone tore an Eichler home down, they would not be required to rebuild an Eichler; however, the homeowner would be encouraged through the guidelines to build a home Eichler like in style. Should the area become designated as a Heritage Resource District, staff would apply the guidelines in a stricter manner.

Mayor Spitaleri stated he supports individual homeowner rights as opposed to adoption of the Eichler guidelines. Mayor Spitaleri stated he prefers that if an alteration is requested for an Eichler home, that change be brought to the Planning Commission and subsequently the neighbors would be allowed to comment in favor or against the project at the commission meeting.

MOTION: Councilmember Hamilton moved and Councilmember Swegles seconded to approve Alternative 1: Adopt the Eichler Design Guidelines with the additional wording located in Attachment E, the additional privacy and solar policies for the Single Family Design Techniques as located on pages 6 and 7 of this report, and the modifications recommended by Planning Commission.

Councilmember Hamilton acknowledged the concerns of those speakers who want to keep the character of their Eichler neighborhoods, but also want to save their property rights. Councilmember Hamilton stated the point of the guidelines is to help the Eichler neighborhoods stay the way they are currently. Councilmember Hamilton stated her concern is over those homeowners who do not care as much as others about preserving the character of their Eichler homes. Councilmember Hamilton stated the guidelines offer a lot of flexibility for homeowners.

Councilmember Whittum stated he opposes the motion as it stands; however, he would be in favor of having only one set of Eichler guidelines in place, and allowing the neighborhood to choose whether they want to adopt the guidelines for their neighborhood. If neighbors wish to adopt the guidelines, then a petition in favor of the guidelines should be brought forward to the City with a majority vote, 50 percent plus one, in favor of adopting the guidelines for that particular neighborhood. Councilmember Whittum stated he would also be in favor of the City polling the neighbors to see if they would be in favor of the guidelines for their neighborhood.

Councilmember Swegles stated he agrees with Councilmember Hamilton that these are guidelines only and they are a working document in which adjustments can be made. Councilmember Swegles identified that the Planning Commission passed the guidelines 7-0 and staff is also in support of these guidelines. Councilmember Swegles stated the proposed guidelines are necessary in order to preserve the Eichler neighborhoods.

Councilmember Hamilton responded to Councilmember Whittum's suggestion stating that she would prefer the guidelines apply to all Eichler homes, because they are specific for Eichlers only. Councilmember Hamilton stated she agrees with the concept of allowing Eichler neighborhoods to weigh in on any decision about designating their homes as heritage resources.

Councilmember Whittum responded that special considerations exist for some of the neighborhoods and it is not clear what would be the best use of the guidelines for those homes with special circumstances.

VOTE: 5-2 (Councilmember Whittum and Mayor Spitaleri dissented)

3. RTC 09-175 2008-1926 Heritage Resource Nomination for Fairorchard Neighborhood which includes Rezoning to add a Heritage Housing (HH) Combining District - Continued from May 12, 2009 (Study Issue)

Vice Mayor Moylan stated he will recuse himself from this item as he resides within 500 feet of the affected neighborhood.

Vice Mayor Moylan left the dais.

Director of Community Development Hanson Hom provided the staff report.

Public hearing opened at 9:17 p.m.

Wilma Anderson stated in order to preserve the Eichler homes, something more than the guidelines is needed. Anderson expressed her support for preserving the Eichler homes and approving the area as a Heritage Housing Combining District.

Lou Wirtz stated he is opposed to adoption of Heritage Housing Combining District for the Fairorchard neighborhood as passage of this would create additional restrictions. Wirtz stated the major issue in the past was privacy; however, the area has been given enough protection since adoption of the single story overlay and the Eichler guidelines which were just approved.

Bill Callahan stated overall he approves of the guidelines just adopted; however, he does believe a Heritage Housing Combining District is needed. Callahan explained the main concern of the neighborhood has been control over remodeled or new buildings that were too large and out of scale for the area. Callahan stated the single story overlay has eliminated that concern and the guidelines will help with future design concerns, without being too restrictive.

Public hearing closed at 9:25 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 2b: Fairorchard Neighborhood: Do not take any action.

Councilmember Howe stated the single story overlay, in addition to the recent adoption of the Eichler guidelines, seem to be enough protection for the area. Councilmember Howe stated adding a Heritage Housing Combining District to the area seems to be too onerous.

Councilmember Hamilton stated a Heritage District would give the area a lot of protection; however, if the neighbors do not want that option, it should not be forced on them. Councilmember Hamilton stated she will support the motion since the neighbors do not feel they need this protection.

Councilmember Chu stated he was in support of designating this area a Heritage District; however, he recognizes that the vote from the neighborhood was evenly split. Additionally, there appears to be enough protection for the neighborhood through adoption of the guidelines and single story overlay zoning. Councilmember Chu stated he will support the motion.

Councilmember Swegles offered a friendly amendment that if the neighborhood was able to obtain a vote of 50 percent plus one in favor of this district, then it would move forward.

Councilmember Howe stated he would agree to have City staff take another polling of the neighborhood regarding designating the area as a Heritage District in two years

Councilmember Swegles accepted the change to his friendly amendment.

Councilmember Howe agreed to modify his motion to include the friendly amendment.

Councilmember Swegles stated due to the adoption of the Eichler guidelines, it is not necessary at this time to move forward with the Historical District designation; however, in two years there may be a differing opinion from the neighborhood and it will be a good idea to check in with the neighborhoods.

Restated MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 2b: Fairorchard Neighborhood: Do not take any action

with

City staff to poll the Fairorchard neighborhood in two years regarding designating the area as a Heritage Housing Combining District

VOTE: 6-0 (Vice Mayor Moylan recused)

Vice Mayor Moylan returned to the dais.

4. RTC 09–194 Community Events Grant Funding Recommendations and Revision of Evaluation Criteria

Assistant City Manager Robert Walker presented the staff report and explained that all \$20,000 will go toward the community event grant funding. Previously, staff had requested \$5,000 for administration of the program; however, that has been worked out and this year all \$20,000 that Council has allocated will go toward issuing grants.

Public hearing opened at 9:32 p.m.

Tammy Bigelow, Interim Chief Executive Officer for Sunnyvale Chamber of Commerce, thanked Council and the City for their continued support of community events. Bigelow spoke of the benefits to the City that the Sunnyvale Art and Wine festival provides and thanked staff for recommending continued support of this event.

Pramod Srinivasan, volunteer for the Art of Living Foundation, spoke in favor of the Care for Child Art Faire and requested Council consider this event. Srinivasan explained the organization is non-profit and their mission is to assist underprivileged children.

Joel Wyrick, Sunnyvale Downtown Association, requested Council approve the staff recommendation to support the association.

Public hearing closed at 9:39 p.m.

MOTION: Councilmember Swegles moved and Councilmember Moylan seconded to approve Alternatives 1 and 3:

Alternative 1: Approve community events grant funding recommendations as proposed by staff, and

Alternative 3: Approve revised community event grant funding eligibility and evaluation criteria guidelines as outlined evaluation as outlined in Attachment E.

Councilmember Howe stated he is opposed to the motion because it represents appropriation of mandatory taxpayer funds for non-core public events, which is a poor choice.

Councilmember Whittum stated he will support the motion but would like to offer a formal amendment.

FORMAL AMENDMENT: Councilmember Whittum moved to replace the phrase: “of at least 500 people” with “several hundred people” on page 3 of 3 in the allocation guidelines.

Councilmember Whittum stated proving at least 500 people showed up to an event would be difficult.

Formal amendment failed for lack of a second.

Councilmember Hamilton stated she will support the motion. Councilmember Hamilton agrees that these events are non-core community events; however, the events are community building and important to the vibrancy of the City.

Mayor Spitaleri verified with Assistant City Manager Walker that priority would be given to a community event of at least 500, but small events are not precluded from applying or being approved.

VOTE: 6-1 (Councilmember Howe dissented)

**5. RESOLUTION Public Hearing for the Collection of Wastewater Charges for
RTC 09-197 Property Outside the City on the Fiscal Year 2009/2010 Property
Tax Roll**

Revenue Systems Supervisor Tim Kirby presented the staff report.

Councilmember Chu inquired why direct billing is not used instead of this process and Supervisor Kirby explained that this is how it has been done ever since the properties were established and it is a very simple process for staff. Staff sends the property tax roll to the County, who in turn places the taxes on the property bills, and the taxes are then paid. Supervisor Kirby stated staff could directly bill the homeowners if that was Council's direction.

Mayor Spitaleri inquired if the services the City provides to homeowners are identical to those provided in Cupertino. Director Rose responded that the services provided are identical with the one exception which is that within Sunnyvale proper, if a City street tree damages a lateral, the City of Sunnyvale will take care of it. However, within unincorporated areas if a street tree damages the lateral, the homeowner would be referred to the City of Cupertino for repair.

Public hearing opened at 9:46 p.m.

No speakers.

Public hearing closed at 9:46 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve Alternative 1: Adopt the resolution approving the proposed assessments.

VOTE:7-0

**6. RESOLUTION Public Hearing to Cause Charges for Non-Payment of Utility
RTC 09–199 Services to be Placed on the FY 2009/2010 Tax Roll**

Revenue Supervisor Tim Kirby presented the staff report.

Councilmember Chu verified with Supervisor Kirby that the administrative charges are what the County charges. Councilmember Chu requested the administrative charges be labeled as County Administrative Charges on future reports.

Public hearing opened at 9:49 p.m.

No speakers

Public hearing closed at 9:49 p.m.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded to approve adoption of the attached resolution causing charges for non-payment of utility services to be placed on the FY 2009/2010 Property Tax Roll
as amended by staff.

VOTE: 7-0

**7. RESOLUTION Adoption of a Resolution Ordering the Formation of the Downtown
RTC 09–196 Parking Maintenance District, Confirming the Final Engineer's
Report and Levying an Assessment for Fiscal Year 2009-2010 and
for Each Fiscal Year Thereafter – Public Hearing**

Councilmember Whittum stated he will recuse himself from this item as his residence is within 500 feet from Zone 4.

Councilmember Whittum left the dais.

Director of Public Works Marvin Rose presented the staff report.

Public hearing opened at 9:53 p.m.

No speakers.

Public hearing closed at 9:53p.m.

Mayor Spitaleri asked if there are any ballots.

Ballots were tabulated while Council moved on to Item 8.
Returned to this item following Item 8.

Director Rose reported the votes have been tabulated and 59 percent of the majority votes are in support the formation of the Downtown Parking Maintenance District.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve Alternative 1: If the vote as tabulated is in support of the proposed assessment, adopt the Resolution to order the formation of the Downtown Parking Maintenance District, confirm the Final Engineer's Report and levy an assessment for Fiscal Year 2009-2010 and for each fiscal year thereafter, and direct staff to instruct the Assessment Engineer to forward assessment to the County of Santa Clara for inclusion on the property tax rolls.

VOTE: 6-0 (Councilmember Whittum recused)

Councilmember Whittum returned to the dais.

**8. RESOLUTION Public Hearing, Landowner Election, and Approval of Amendment
ORDINANCE and Restatement of the Rate and Method of Apportionment of
RTC 09-190 Special Tax and Changes to the Boundary Map for the City of
 Sunnyvale Community Facilities District No. 1**

Redevelopment Manager Brice McQueen presented the staff report.

Public hearing opened at 9:57 p.m.

No speakers.

Public hearing closed at 9:57p.m.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve the amendment and restatement of the rate and method of apportionment of special tax and changes to the boundary map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolution set forth in Attachment A:
• Resolution Calling Special Election (Attachment A)

VOTE: 7-0

City Clerk Kathleen Franco Simmons opened the ballots and declared the vote which was as follows: One hundred percent of the ballots received have a yes vote; therefore, the two-third's vote needed to move forward has been received.

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve the amendment and restatement of the rate and method of apportionment of special tax and changes to the boundary map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolution set forth in Attachment B:

- Resolution Declaring Results of Special Election (Attachment B)

VOTE: 7-0

MOTION: Councilmember Swegles moved and Councilmember Howe seconded to approve the amendment and restatement of the rate and method of apportionment of special tax and changes to the boundary map for the City of Sunnyvale Community Facilities District No. 1 by adopting the following resolution set forth in Attachment C and D:

- Resolution of Change (Attachment C)
- Adoption of Ordinance Ordering Levy of Special Taxes (Attachment D)

City Clerk Kathleen Franco Simmons read the title of the ordinance into the record.

VOTE: 7-0

9. RTC 09–193 Consider Creation of a Distribution List Linking E-mail Addresses to Geographic Mailing Address (Study Issue), Continued from May 12, 2009

Assistant City Manager Robert Walker presented the staff report.

Councilmember Hamilton inquired whether the addresses could automatically match addresses instead of using staff to manually match items. Assistant City Manager Walker explained that the software is specific to the entire address, such as the word street must be spelled out; therefore, staff assistance will be needed.

Director of Information Technology Cuong Nguyen verified with Councilmember Hamilton that online searching for addresses would be a possibility if Council wished to pursue that direction.

Councilmember Hamilton verified with Assistant City Manager Walker that a one page sign-up for the City's website will be accessible in a few weeks; however, single sign-on will still not be available.

Councilmember Hamilton and Director Nguyen discussed future possibilities to streamline the City's website.

Public hearing opened at 10:10 p.m.

Jim Griffith explained that exact address look up is one of the most difficult software issues to solve and would not be easy for the City to do on their own. Griffith spoke about concerns with *Google Alert* and suggested the City attempt to create a program themselves to address the issue of exact address look up.

Vice Mayor Moylan verified with Griffith that he is recommending Alternatives 3, 4 and 5.

Public hearing closed at 10:13 p.m.

Councilmember Hamilton inquired as to when the utility billing will be available online and Finance Manager Grace Leung responded that it should be available in 2010.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternatives 3, 4 and 5:

- Alternative 3: Continue current staff efforts directed toward the implementation of systems whereby members of the public are able to subscribe, on a non-address-specific basis, to services notifying them of changes to website listings and other topic-based information items (includes exploration of *Google Alert*);
- Alternative 4: Create a single website identifying all possible online City transactions, as well as a link from that website to each individual website where online transactions can be made, and
- Alternative 5: Direct the city manager to have staff continue to use its best judgment to determine the most efficient and cost-effective method to convey public notices, provided that specific noticing methods described in the Sunnyvale Municipal Code are adhered to;

with direction to staff to explore linking of email address with online utility billing, which would be maintained by the citizens.

Councilmember Howe offered a friendly amendment to issue an absolute prohibition against any type of commercial use other than for City purposes, and that a privacy policy is established which does not allow divulging of any email addresses, or anything else from the City out to the general public or to a specific request. If it can be obtained by a public records request, the City will not release that information.

Mayor Spitaleri verified with City Attorney Kahn that if the City has email address information for City use, then it would be subject to disclosure under a public records request under the California Public Records Law.

Councilmember Howe stated a warning could be added notifying residents that this information is subject to public records requests.

Councilmember Hamilton accepted the friendly amendment.

Councilmember Hamilton stated the purpose of the motion is to allow a little more transparency and allow the City to have the ability to reach people with notifications more efficiently. Councilmember Hamilton stated the intent of the motion is for staff to come back with status updates regarding the utility billing progress and the progress of having a single sign-in to allow residents access to all services in the City by signing into the website once. Councilmember Hamilton stated this motion is a small step toward becoming more transparent.

FORMAL AMENDMENT: Vice Mayor Moylan moved to have added to the original motion a version of Alternative 2, allowing individuals to sign up with their email address, which staff would not maintain, and any time an email is returned, it will be automatically deleted.

Vice Mayor Moylan stated he supports the motion but feels this amendment would keep this item from being a burden on staff and yet still accomplish the original goals.

Formal amendment failed for lack of second.

Restated MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve Alternatives 3, 4 and 5:

- Alternative 3. Continue current staff efforts directed toward the implementation of systems whereby members of the public are able to subscribe, on a non-address-specific basis, to services notifying them of changes to Web site listings and other topic-based information items;
- Alternative 4: Create a single website identifying all possible online City transactions, as well as a link from that website to each individual website where online transactions can be made. and
- Alternative 5: Direct the city manager to have staff continue to use its best judgment to determine the most efficient and cost-effective method to convey public notices, provided that specific noticing methods described in the Sunnyvale Municipal Code are adhered to.

with:

- Direct the city manager to explore linking of email addresses with online utility billing, which would be maintained by the citizens;
- Direct the city manager to continue to update Council regarding with utility billing and the progress of having a single sign-in to allow residents access to all services in the City by signing into the website once;
- Issue an absolute prohibition against any type of commercial use of this information other than for City purposes, and that a privacy policy be established which does not allow divulging of any email addresses, or anything else from the City, out to the general public with the exception of a public records request, and
- Upon disclosure of an email address by a member of the public, a warning will be given notifying residents that this information is subject to public records requests.

Mayor Spitaleri clarified with Councilmember Hamilton that all customers will have the option to do online billing, or not, and that if they chose to do so, they will receive a warning that their information is subject to being divulged in a public records act request.

VOTE: 7-0

**10. COUNCIL Report by Ethics Subcommittee and Action Regarding Ethics
DISCUSSION Brochure and Candidate Debates for November 2009 Council
 Election**

Councilmember Howe provided a report from the ethics subcommittee. The ethics subcommittee will produce a brochure, similar to one produced during the last election. The brochure will cost approximately \$6,000 and will be included in the City's Quarterly Report.

The subcommittee agreed to approve two public candidate debates, one to be scheduled close to when the absentee ballots come out, and the other one close to the November 3, 2009 election. Should any negative campaign pieces surface, an additional debate will be scheduled for the night before the election. The ethics subcommittee will select the moderator, who will be an independent individual with no stake in the election and who has not given any campaign funds to anyone. The cost of the broadcast will be \$250 for each candidate forum.

Councilmember Hamilton verified with Councilmember Howe that the debate format will be left up to the moderator. Councilmember Hamilton stated that the League of Women Voters is interested in working with the City on the debates. Councilmember Howe responded that one of the current council candidates, offers office space to the League and therefore a question of impartiality would be a concern in accepting the League's offer of assistance.

Vice Mayor Moylan verified with Councilmember Howe that the subcommittee will continue to work on finalizing the brochure and will select the moderator; however, after that the City and Council will be removed from the process. Councilmember Howe stressed the importance of choosing a well-qualified and truly independent moderator.

Councilmember Whittum verified with Assistant City Manager Walker that typically the City allows any organization that provides a community service, such as the League of Women Voters, access to the council chambers. The League will be able to hold a public debate in the council chambers with the candidates. The chambers would be scheduled for no cost, but if the league requested to televise the debate on KSUN, they would need to pay for that service.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to appropriate \$6,000 with a 10 percent contingency, based on staff's estimate, for the cost of printing brochures, and up to \$1,000 for the cost of holding public candidate debates, and directed the city manager to have staff cooperate with the moderator in putting on the debates.

Public hearing opened at 10:30 p.m.

No speakers.

Public hearing closed at 10:30 p.m.

Vice Mayor Moylan thanked the subcommittee for following up on this process again this year. Vice Mayor Moylan stated this process has been done for the past two years and negative campaigning has seemed to decrease. The adoption of having a "Last Word" event where negative items have a forum to be discussed at the last minute is a positive addition.

VOTE:7-0

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

None.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Council Howe requested the city manager to extend an offer of City assistance to *Target* with providing an opening ceremony to contribute to the success of the store.

Councilmember Chu announced his sister Dr. Judy Chu was elected to the United States Congress on July 14, 2009 and she is the first Chinese-American woman ever to be elected to Congress.

Councilmember Swegles questioned if Councilmember Howe's request to assist Target should be made in a formal motion. City Manager Luebbbers explained that staff has been working closely with Target and will continue to do so for their opening ceremonies.

Mayor Spitaleri announced the Pet Parade will be coming soon.

STAFF: None.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of the Heritage Preservation Commission Meeting of July 1, 2009
- Draft Minutes of the Board of Library Trustees Meeting of July 6, 2009
- RTC 09-195 Update on Environmental Sustainability Project (Information Only)
- RTC 09-202 Opportunity for Council to Appeal Decisions of the Planning Commission of July 13, 2009 and the Administrative Hearing of July 15, 2009
- Study Session Summary of July 14, 2009 – Parks of the Future Report

ADJOURNMENT

Mayor Spitaleri adjourned the Council meeting at 10:34 p.m.

Kathleen Franco Simmons
City Clerk

Date